***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

W.P.No.23597 of 2005

% 3-01-2006

Between:

S.Pakeer Saheb S/o.Madar Saheb.

…Petitioner

And

The Nagarjuna Grameena Bank,

Rep. by its Chairman and Disciplinary Authority,

Khammam, Khammam District & another

…Respondents

! COUNSEL FOR PETITIONER: Mr.S.M.Subhan

^ COUNSEL FOR RESPONDENTS: Mr.K.Srinivasa Murthy, Standing Counsel for the Bank

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> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.27465 OF 2005

Dated 3rd January 2006

Between:

S.Pakeer Saheb S/o.Madar Saheb.

…Petitioner

And

The Nagarjuna Grameena Bank,

Rep. by its Chairman and Disciplinary Authority,

Khammam, Khammam District & another

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.27465 OF 2005

O R D E R:

The petitioner is employed as Clerk-cum-Cashier in the Nagarjuna Grameena Bank, Khammam. He was placed under suspension, by the second respondent, vide proceedings dated 23.2.1993, on the allegation of misappropriation of the funds belonging to the bank. Prosecution was launched against him, under Sections 409, 417 and 201 of I.P.C., in C.C.No.133 of 1994, on the file of the Judicial Magistrate of First Class, Deverakonda, Nalgonda District. Simultaneously, departmental proceedings were initiated against him, by issuing a charge sheet, dated 4.5.1998. In view of the pendency of the proceedings before the Criminal Court, the disciplinary enquiry was not proceeded with.

Through its judgment, dated 11.10.1999, the trial court found the petitioner guilty of the charges framed against him, and sentenced him to undergo simple imprisonment for a period of one year, and to pay a fine of Rs.500/-. The petitioner filed Criminal Appeal No.58 of 2003, in the Court of I Additional District Judge, Nalgonda. On the basis of the conviction of the petitioner in the criminal case, the respondents issued a show-cause notice dated 24.1.2000, requiring the petitioner to show-cause as to why he shall not be removed from service. Petitioner filed W.P.No.1873 of 2000 in this Court. In view of the fact that the sentence passed against the petitioner, by the trial court, was suspended by the lower appellate Court, an interim order was passed in WPMP.No.2379 of 2000, staying the further proceedings in pursuance of the show-cause notice. It was, however, left open to the first respondent, to proceed with the departmental enquiry.

Criminal Appeal No.58 of 2003 was allowed by the lower appellate Court, through its judgment dated 28.10.2003. Thereafter, the first respondent issued proceedings dated 25.11.2005, indicating that the domestic enquiry against the petitioner would be proceeded with, the enquiry will be conducted by Sri S.Raghava Chary, Branch Manager, Pochampally, and that Sri T.Vijaya Shankar, an officer of the Bank will continue to be the prosecuting officer. The petitioner challenges the proceedings dated 25.11.2005, stating that once he was acquitted of the charges leveled against

him by the competent Criminal Court, it is not open to the respondents, to conduct departmental enquiry, on the same charges.

Sri S.M.Subhan, learned counsel for the petitioner, submits that the charges against the petitioner framed in the criminal case, on the one hand, and in the departmental proceedings, on the other hand, are one and the same, and once the appellate court held that the petitioner is not guilty of the offence, there does not any justification for the respondents, in resuming the enquiry.

Learned Standing Counsel for the respondents, on the other hand, submits that considerations of standard of proof in the criminal proceedings, on the one hand, and the departmental proceedings, on the other, are totally different, and that no exception can be taken to the action of the respondents.

The petitioner was accused of misappropriating the funds of the bank. The allegations gave rise to two sets of proceedings. Prosecution was launched against him, under the relevant provisions of the IPC, before the concerned Criminal Court. Simultaneously, departmental proceedings were initiated, by serving a charge memo. The facts that gave rise to both the proceedings were one and the same. In that view of the matter, the respondents have chosen not to proceed with the departmental enquiry, during the pendency of the criminal proceedings. They can be said to have followed the settled principles of law, in this regard.

The trial court convicted the petitioner of the charges. In view of this conviction, the respondents issued show-cause notice to the petitioner, as to why he shall not be removed from service. The appeal preferred by the petitioner, against the conviction and sentence, was pending, and the sentence was suspended. In that view of the matter, it was not open to the respondents, to take further steps, on the basis of the conviction ordered by the trial court.

The basis for interdicting the departmental proceedings, where the employee is facing prosecution on the same charges, is that the employee must not be

compelled to reveal his defence in the departmental proceedings, even while the prosecution is pending. Once the proceedings before the Criminal Court culminated, whether in acquittal or conviction of the employee, the way for proceeding with the departmental enquiry becomes clear. If the employee is convicted, two options are open to the employer. The first is that it can proceed to impose the punishment, on the basis of the conviction alone, depending on the purport of the relevant service rules. The second option is to proceed with the departmental enquiry and to take suitable action, on the basis of the outcome of departmental proceedings, or the conviction, or on the basis of both. In case, the employee is acquitted, it shall be open to the employer, to commence or continue the departmental proceedings, and to take necessary action, depending on the outcome of the enquiry.

It is well settled principle of law that the standard of proof and the purport of enquiry, in the criminal proceedings on the one hand, and the departmental proceedings, on the other hand, are totally different from each other. For the most part of it, the Criminal Court would insist upon proof, beyond any reasonable doubt, for convicting of accused, of the charges leveled against him. The benefit of doubt, or the contradictions in the evidence, would be extended to the accused. The whole burden rests upon the prosecution, and an accused would not be under obligation at all, to explain the allegations against him. In contrast, the considerations in the departmental proceedings are substantially different. The employer can be said to have discharged its burden. If the allegations against the employee are related to any documents, or are spoken to by any witnesses, the employee would be under obligation to explain his conduct, *vis-à-vis* the allegations against him. He does not have the right of silence in such proceedings.

In the instant case, the conviction, which was ordered by the trial court against the petitioner, was set aside by the lower appellate court. The result thereof is that the respondents cannot impose any punishment on the petitioner, solely on the basis of the outcome of the criminal proceedings. However, once the criminal proceedings are terminated, the respondents can certainly resume the departmental proceedings.

The contentions advanced on behalf of the petitioner that once he is acquitted by the

Criminal Court, it is not open to the respondents, to proceed against him, cannot at all be accepted. It is not as if the departmental proceedings, against the petitioner, came to an end, with the initiation of prosecution. If the respondents did not proceed against the petitioner departmentally, all these years, it is on account of their respect for principle of law, and not on account of any legal disability. At the most, the departmental proceedings can be said to have been eclipsed, as long as the prosecution against the petitioner remain. With the disposal of the criminal case, the eclipse ceases, and the departmental proceedings become active. Therefore, this Court does not find any basis to interfere with the impugned order.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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(**L.NARASIMHA REDDY, J)**

Dt. January 2006

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